

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 PAUL T. HAMMERNESS,  
Supervising Deputy Attorney General  
3 KAY K. YU, (State Bar No. 142479)  
Deputy Attorney General  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3664  
5 Telephone: (415) 703-5593  
Facsimile: (415) 703-1107  
6 Attorneys for Defendant Bradley A. Soloman

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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11 JOHN GABOR, KAY GABOR,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA, ET  
AL.

15 Defendants.  
16

CASE NO. C07 06091 RW

**REPLY TO PLAINTIFF'S OPPOSITION  
TO DEFENDANT BRADLEY  
SOLOMON'S MOTION TO DISMISS**

Date: July 18, 2008  
Time: 9:00 a.m.  
Place: Ctr. 4, 4th Floor  
Judge: The Ronald M. Whyte  
Date Action Filed: December 3, 2007  
Trial Date: Not Set

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **PRELIMINARY STATEMENT**

19 In opposition, plaintiffs have failed to address defendant's two grounds for dismissal.  
20 Plaintiffs did not address defendant's argument that he is entitled to absolute quasi-judicial  
21 immunity. The only mention, by plaintiffs, of the immunity argument is contained in paragraph  
22 four of their opposition. That sole contention, made by plaintiffs, is nonsensical. Paragraph  
23 four states: "Defendants [sic] Solomon has no immunity as a 'coconspirator' [sic] since his  
24 personal participation in the conspiracy and his liability will be decided by a jury." Plaintiffs  
25 make this statement without citing any authority.

26 Plaintiff, also, failed to address Mr. Solomon's second argument in the motion to  
27 dismiss, that the Complaint failed to state facts to state a claim for a 42 U.S.C. § 1983 action.  
28

1 As more fully stated hereinafter, the complaint should be dismissed as defendant Bradley  
2 Solomon is immune from suit and the Complaint failed to state facts to state a claim.

3 **ARGUMENT**

4 **I.**

5 **DEPUTY ATTORNEY GENERAL BRADLEY SOLOMON**  
6 **IS ENTITLED TO ABSOLUTE QUASI-JUDICIAL IMMUNITY**

7 Defendant Bradley A. Solomon is entitled to absolute immunity because the alleged  
8 conduct was taken in connection with the judicial process. *Fry v. Melarango*, 939 F.2d 832,  
9 836 (9<sup>th</sup> Cir. 1991) (government attorneys immune for acts during the judicial phase of  
10 litigation; *Flood v. Harrington*, 532 F.2d 1248, 1250-52 (9<sup>th</sup> Cir. 1978) (same). Plaintiffs have  
11 failed to provide any authority to challenge this defense.

12 Accordingly, defendant Bradley A. Solomon is immune from suit as his alleged conduct  
13 was performed in the course of his defense of the Attorney General.

14 **II.**

15 **PLAINTIFFS HAVE FAILED TO STATE FACTS TO STATE**  
16 **CLAIM FOR A VIOLATION OF 42 U.S.C. § 1983**

17 There is a paucity of facts regarding Mr. Solomon's alleged wrongful act. As mentioned  
18 in defendant's motion to dismiss, there is one short paragraph that referenced Mr. Solomon's  
19 alleged actions. Even if plaintiffs' allegations were true, they have failed to state facts to state a  
20 claim.

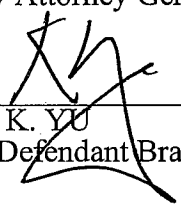
21 **CONCLUSION**

22 For the foregoing reasons, defendant Bradley A. Solomon respectfully requests that the  
23 motion to dismiss be granted with prejudice.

1 Dated: June 9, 2008

2  
3 Respectfully submitted,

4 EDMUND G. BROWN JR., Attorney General  
5 of the State of California  
6 PAUL T. HAMMERNESS  
7 Supervising Deputy Attorney General  
8 KAY K. YU  
9 Deputy Attorney General

10  
11 By:   
12 KAY K. YU  
13 Attorneys for Defendant Bradley A. Solomon  
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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***Gabor v. United States of America, et al.***

U.S. D.C. Northern Case No.: 5:07-cv-06091 PVT

I declare:

I am employed in the County of San Francisco, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102.

On June 9, 2008, I served the attached:

**REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT BRADLEY  
SOLOMON'S MOTION TO DISMISS**

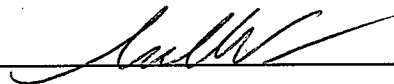
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

**John Gabor and Kay Gabor  
590 Smokey Court  
Campbell, CA 95008-3717**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 9, 2008, at San Francisco, California.

Anh Ho

\_\_\_\_\_  
Typed Name



\_\_\_\_\_  
Signature